

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CV-97-BO

WILLIE COUNCIL, Representative for)
Jacqueline E. Council, Deceased Wife,)
Plaintiff,)

v.)

U.S. NAVY/CAMP LEJEUNE, NC/)
WASHINGTON, D.C.)
Defendant.)

ORDER

This cause comes before the Court on the memorandum and recommendation of United States Magistrate Judge James E. Gates pursuant to 28 U.S.C. § 636. [DE 4]. Plaintiff, proceeding *pro se*, has filed objections to the memorandum and recommendation. [DE 5].


Magistrate Judge Gates recommends that plaintiff's motion to proceed *in forma pauperis* be denied based on a failure to demonstrate an inability to pay the required costs of court. A district court is required to review *de novo* those portions of an M&R to which a party timely files specific objections or where there is plain error. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985). “[I]n the absence of a timely filed objection, a district court need not conduct *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation and citation omitted).

The undersigned has reviewed plaintiff's income and expenses as reflected in plaintiff's motion to proceed *in forma pauperis* and his response to the recommendation. Although plaintiff's monthly income exceeds his listed monthly expenses, plaintiff's fixed-income is managed by his children and he must travel out of state each month for cancer treatments. Accordingly, based on

its *de novo* review, this Court has determined that plaintiff has demonstrated appropriate evidence of inability to pay the required costs of court. *See, e.g., Potnick v. E. State Hosp.*, 701 F.2d 243, 244 (2d Cir. 1983) (a party need not be destitute to proceed *in forma pauperis*).

Accordingly, the memorandum and recommendation is REJECTED. Plaintiff's application to proceed *in forma pauperis* [DE 1] is GRANTED. The clerk is DIRECTED to file the complaint, issue the summons, and prepare the USM 285 forms for service. The U.S. Marshals Service is DIRECTED to serve a copy the complaint, summons, and this order on defendant.

SO ORDERED, this 15 day of April, 2019.


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE